No. 92-1388

Supreme Court of the United States

OCTOBER TERM, 1992

MIDGE SULLIVAN, PETITIONER

v.

STATE OF OKLAHOMA, EX REL.
OKLAHOMA TAX COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

In an equal protection challenge to a state income tax exemption, where there is no claim that the classification discriminates against the federal government or those with whom it deals, were the courts below correct in following the "rational basis" test historically applied in such cases, as opposed to petitioner's proffered standard, which applies only to intergovernmental immunity cases.

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Respondent respectfully requests that the Court deny the petition for a writ of certiorari, which seeks review of the opinion of the Court of Appeals, Division No. 2, of the State of Oklahoma. That opinion, reported at 841 P.2d 619 (Okla. App. 1992), strictly conforms to the applicable decisions of this Court.

STATEMENT OF THE CASE

Respondent incorporates herein by reference the statement of facts set forth in Part I (Pet. App. A2—A5) of the Oklahoma Court of Appeals' opinion in this case.

Oklahoma exempts from its income tax the first $5500 in retirement benefits received by retired federal, state and local government workers, but does not grant the same exemption to nongovernmental, private-sector retirees.

Petitioner, a private-sector retiree, brought an action in state court to declare those exemptions unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

The trial court upheld the challenged classification, finding that "the challenged exemptions are part of the benefits provided by the legislature for governmental employment, and that these benefits are rationally related to the state's interest in [the] hiring and retaining of qualified government employees." (Pet. App., A5.)

The state court of appeals affirmed, and the Oklahoma Supreme Court declined review.

REASONS FOR DENYING THE WRIT

I.

The exemptions granted to retired public employees are rationally related to a legitimate governmental purpose and state policy and are, therefore, constitutional.

There is possibly nothing more settled in the area of constitutional consideration of state action than the principle that the Equal Protection Clause permits discriminations between classes so long as the state action rationally furthers a legitimate state purpose or interest. *Bell's Gap R. Co. v. Pennsylvania*, 134 U.S. 232 (1890); *Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Any classification of taxation which has a reasonable relation to a legitimate end of governmental action is permissible. *Welch v. Henry*, 305 U.S. 134, 144 (1938).

The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. In taxation, even more than in other fields,

legislatures possess the greatest freedom in classification. Such legislative classifications are presumed to be constitutional, and such presumption can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. *Madden v. Kentucky*, 309 U.S. 83, 87–88 (1940). *See also, Lehnhausen v. Lakeshore Auto Parts Co.*, 410 U.S. 356 (1973); *Regan v. Taxation With Representation of Washington*, 461 U.S. 540 (1983).

All that is needed to satisfy the Constitution is for the classification created by the exemptions here challenged by the petitioner is that they reasonably tend to the accomplishment of the purpose intended and not be purely arbitrary. *See, e.g., Welch v. Henry, supra.* And, the legislative arrangement will not be deemed arbitrary even though it discriminates in favor of a certain class, if the discrimination is founded upon a reasonable distinction, or a difference in state policy. *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522 (1959); *Kahn v. Shevin*, 416 U.S. 351 (1974). In sum, the tax law and plan of exemptions here challenged must be sustained if any state of facts reasonably may be conceived to justify it. *Dandridge v. Williams*, 397 U.S. 471 (1970), citing *McGowan v. Maryland*, 366 U.S. 420 (1961). *See also, Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276 (1932).

It is obvious that the state has a legitimate interest and purpose in recruiting and retaining qualified civil servants, and that a system of compensation and benefits is essential to the accomplishment of that purpose. The trial court below found, and the state court of appeals affirmed, that the challenged exemptions are and historically have been a part of the benefits provided by the legislature for governmental employment, and that the exemption accomplishes the purposes intended. (Pet. App. A-11) (RAPP, P.J., concurring in result.) The Arkansas and Missouri courts reached similar conclusions in cases essentially identical to this one. *Streight v. Ragland*, 655

S.W.2d 459 (Ark. 1983); *Schnorbus v. Director of Revenue*, 790 S.W.2d 241 (Mo. banc 1990), *cert. denied*, 111 S.Ct. 679 (1991). In each of those two cases private-sector retirees challenged those states' tax schemes which, by way of exemptions, favored governmental employees. In each case, applying the accepted rational-basis standard, the tax plans were found to be constitutionally valid.

The petitioner here has in no way demonstrated why this case should be different, or that the opinion below in any way conflicts with this Court's long line of decisions in equal protection cases. The opinion below is in conformity with those decisions and is demonstrably correct. There is no occasion for further review.

II.

The standard employed in *Davis v. Michigan Dept. of Treasury*, proffered here by petitioner, is inapplicable where the interests of the federal government are not involved.

Petitioner does not appear to dispute the principle followed below—one which has withstood over a century of this Court's jurisprudence—that a state tax classification does not violate the Equal Protection Clause if it is either inherently reasonable or is rationally related to advancing a legitimate governmental interest, purpose or policy. Nor does petitioner here argue that the exemptions granted to public retirees are not rationally related to the state's interest in recruiting and retaining qualified public employees. Instead, petitioner's sole argument is that these reasons were held to be insufficient to sustain the tax classification in *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 109 S.Ct. 1500 (1989).

The simple answer to petitioner's argument is that *Davis* was not an equal protection case. There, the

problem was one of intergovernmental tax immunity, and the Court's decisions in the equal protection field were found to be "inappropriate." *Id.*, 109 S.Ct. at 1508. The rationale and inquiry employed in *Davis* are appropriate only where "the Government's interests must be weighed in the balance." *Ibid.* Petitioner has never claimed, and does not claim here, that the National Government or those with whom it deals are interested in or affected by the exemptions or tax classification involved in this case.

Here, Oklahoma is "dealing with its proper domestic concerns, and not trenching upon the prerogatives of the National Government. When such is the case, the State's power to classify is, indeed, extremely broad, and its discretion is limited only by constitutional rights and by the doctrine that a classification may not be palpably arbitrary." *See Phillips Chemical Co. v. Dumas Ind. Sch. Dist.*, 361 U.S. 376, 385 (1960), citing *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526-528 (1959).

Contrary to petitioner's argument, if *Davis* is instructive to this case at all, it is that the state's interest in hiring and retaining qualified civil servants through the inducement of a tax exemption for retirement benefits "demonstrates that the State has a rational reason for discriminating between two similar groups of retirees." *Davis*, 109 S.Ct. at 1508. And, it is just that "rational reason" that the court below, consistent with this Court's decisions that *are* applicable to this case, found to be sufficient for equal protection purposes.

As in *Schnorbus v. Director of Revenue*, *supra*, petitioner's reliance upon *Davis* is misplaced. *Schnorbus*, 790 S.W.2d at 243. If anything, as relevant to the principles applicable to this equal protection case, *Davis* supports the decision below. Again, there is no occasion for further review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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